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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,949	05/16/2005	George Mauro	NATAPE P16BUSP2	1714
20210 7590 10/01/2010 DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301				
EXAMINER				
ALIE, GHASSEM				
ART UNIT		PAPER NUMBER		
3724				
MAIL DATE		DELIVERY MODE		
10/01/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

***Advisory Action
Before the Filing of an Appeal Brief***

Application No.

10/534,949

Applicant(s)

MAURO, GEORGE

Examiner

GHASSEM ALIE

Art Unit

3724

–THE MAILING DATE of this communication appears on the cover sheet with the correspondence address –

THE REPLY FILED 27 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be provided by 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Applicant's Amendment After Final filed on 09/27/10 has not been considered. Claim 23 now recites, "a cut formed on a sidewall of the tubular member thereby forming a gap in the circular and planar cutting edge" which raises new issues that require further consideration and search. It should be noted that the newly added limitation in claim 23 has never been examined with the remaining limitations of claim 23. The new limitation set forth in independent claim 23 may be similar to one of the limitations set forth in independent claim 29; however, remaining limitations in the independent claim 23 are different than the remaining limitations in claim 29. For example, claim 29 is narrower claim that is directed to opposed first and second planar blades each having a planar cutting edge. If independent claim 23, as amended, was submitted before the final rejection, Examiner would have considered a different set of rejection with respect to claim 23. However, now Examiner cannot consider a different rejection for amended independent claim 23, since the last action has been made final. With respect to the rejection of the claims under 35 U.S.C. 112, first paragraph, applicant's argument is not persuasive. The specification recites that the cutting edges 11 of the blades lie in a plane P1 that is coincident with the longitudinal axis 15. The specification also recites that the fold line F of the blade extends parallel to the longitudinal axis 15. However, the specification does not disclose that the blade as a whole extends coincident and parallel to the longitudinal axis. At least blades 11 have extended inside portions that are not coincide and parallel to the longitudinal axis. It is suggested that claims recite the folding line F of the blade being parallel to the longitudinal axis, and the plane P1 of the blades being coincident to the longitudinal axis. It is also suggested that the claims positively recite the structure of the planar blades; instead of reciting how the planar blades are formed, since the claims are directed to a product or an apparatus instead of a process or a method of forming planar blades. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 23, 28, 29, 34, 42, 44, 45 and 48.
 Claim(s) withdrawn from consideration: 38-41, 43, 46 and 47.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____

/Ghassem Alie/
Primary Examiner, Art Unit 3724